

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

QUINTEZ TALLEY,
Plaintiff

v.

PA DEPT. OF CORRECTIONS, et al.,
Defendant

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:
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No. 3:16cv2074

(Judge Munley)
(Magistrate Judge Mehalchick)

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ORDER

AND NOW, to wit, this 2nd day of March 2018 it is **HEREBY ORDERED** as follows:

1. Plaintiff's objection to the Report and Recommendation (Doc. 21) is **OVERRULED**;
2. The Report and Recommendation of Magistrate Judge Mehalchick (Doc. 20) is **ADOPTED**;
3. Defendants' motion to dismiss (Doc. 14) is **GRANTED** in part and **DENIED** in part;
4. All claims against the DOC under the Eighth and Fourteenth Amendments are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6);
5. The following claims are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) with **LEAVE TO AMEND**:
 - a. All claims brought under 42 U.S.C. § 1983, either under the Eighth Amendment, Fourteenth Amendment, or the ADA, against Dr. Lincoln; and
 - b. All ADA claims against the DOC;

6. Plaintiff is **ALLOWED TO PROCEED** as to:

- a. All Eighth Amendment claims asserted against Defendants Shaw, Reiter, Balko, Wetzel, Ferguson, SEPD, Fagan, Ellenberger, Salamon, Graham, Anstead, Link, Varner, and BHCS stemming from their alleged deliberate indifference to a serious medical need;
- b. All Fourteenth Amendment supervisory liability claims against Ellenberger, Wetzel, Fagans, and SEPD stemming from their alleged lack of oversight of the inmate grievance system and prison safety conditions;
- c. Plaintiff's conspiracy claims against the DOC Defendants under 42 U.S.C. § 1983;

7. Plaintiff has **THIRTY (30) DAYS** leave to file an amended complaint that reasserts his remaining claims, including those allowed to proceed, and those dismissed without prejudice, in accordance with Rule 8(d)(1) of the Federal Rules of Civil Procedure and is complete in all aspects; and

8. The matter is remanded to Magistrate Judge Mehalchick for further proceedings.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court